

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
NEW ALBANY DIVISION

IN RE:	)	CASE NO. 10-93904-BHL-11
	)	
EASTERN LIVESTOCK CO., LLC,	)	Hon. Basil H. Lorch, III
	)	
Debtor.	)	
	)	

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**RESPONSE OF ASHVILLE STOCKYARD, INC. IN OPPOSITION TO TRUSTEE'S  
OBJECTION TO CLAIMS 511**

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COMES NOW Claimant ASHVILLE STOCKYARD, INC. ("Ashville"), by and through undersigned counsel, and files this *Response Of Ashville Stockyard, Inc. In Opposition To Trustee's Objection To Claims 511* and statess as follows:

1. The Trustee filed objections to Claim No. 511 on April 19, 2013 providing thirty (30) days in which to respond. The thirty (30) day period ran May 19, 2013, a Sunday, this response is timely.

2. The Trustee's Objection To Claim 511 ("Doc. 2063") seeks an order disallowing Claim 511 pursuant to 11 U.S.C. §502(d). Ashville is Defendant in a preference action, Case No. 12-59128, and the Trustee seeks to stay action on the claim pending outcome of the adversary proceeding.

3. Defendant Ashville responds without objection to entry of a stay of Defendant's Claim Objection pending determination of the Adversary Proceeding, Case 12-59128. Defendant does however object to any assertion or implication that Defendant's claim is invalid. Defendant was a recipient of two (2) checks dishonored by Fifth Third Bank (nos. F34155 in the amount of

\$75,625.65 for 155 head and F34156 in the amount of \$88,260.15 for 175 head) which together totaled \$163,885.80. **Exhibit A.**

4. Eastern was the “Clearing Agency” for the transactions in question, and neither Eastern nor the “Clearee” E4 Cattle Company, Okolona, MS, received any prior notice of Fifth Third’s dishonor of over \$50 million in checks (of which the Trustee has stated approximately \$28 million were “real” cattle sales). Ashville did receive replacement payments from funds negotiated on its behalf by E4 Cattle and without objection by the Receiver. Ashville received payment of \$75,625.65 and another check in the amount of \$58,000.00 which reduced the unpaid amount to the \$30,260.15 amount of Claim No. 511.

WHEREFORE although without objection to the requested stay pending outcome of the adversary proceeding, Ashville Stockyard, Inc.’s Claim No. 511 in the amount of \$30,260.15 is entirely valid and proper and should be allowed without objection.

Respectfully submitted this 20<sup>th</sup> day of May 2013,

W. SCOTT NEWBERN, PL

/s/ Walter Scott Newbern

W. Scott Newbern  
2982 East Giverny  
Tallahassee, FL 32309  
(T) 850.591.1707  
(F) 850.8940871  
[wsnewbern@msn.com](mailto:wsnewbern@msn.com)

COUNSEL FOR CLAIMANTS

**CERTIFICATE OF SERVICE**

I hereby certify that on this 20<sup>th</sup> day of May 2013, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

/s/ W. Scott Newbern  
W. SCOTT NEWBERN

# **Exhibit A**

*Chapter 11*  
 Case # 10-93904-BHL-11  
 Hon. Basil H Lerch III

OMB CONTROL NO. 0580-0015

U.S. Department of Agriculture  
 Grain Inspection, Packers and  
 Stockyards Administration  
 Packers and Stockyards  
 Program

## Proof of Claim Under:

1. Surety Bond, (Clause 2, 3, or 4)
2. Trust Fund Agreement, (Clause 2, 3, or 4)
3. Trust Agreement, (Clause 2, 3, or 4)

Issued Under Provisions of The Packers and  
 Stockyards Act, 1921, as Amended and Supplemented

State of (1) Alabama

County (2) St. Clair

As the undersigned, I, (3) Ashville Stockyard Inc.

Of (4) PO Box 580 (full name of claimant) (5) 205-594-7087 & 5151

(complete mailing address) Ashville AL 35953 (phone: home, cell) 205-594-5672 fax  
 (other contact information: fax number, email address)

being duly sworn, depose and state:

I make this claim to (6) Capitol Indemnity Corporation  
 (name of trustee or surety)

RECEIVED

MAY 10 2011

BMC GROUP

Select One:

☒ under the bond issued by the (7a)  
Capitol Indemnity Corporation

(name of surety company)

☐ under the Trust Fund Agreement with security held by (7b)

(depository, if one named)

☐ under the Trust Agreement with letter of credit held by (7c)

(name of trustee)

on behalf of (8) Eastern Livestock Co., LLC

(full name and address of principle named in bond or trust agreement)  
135 West Market St., New Albany, IN 47150

in the amount of (9) 30,260.15, due and owing for livestock purchased by

(10) Eastern Livestock Co., LLC 135 West Market St.  
 (full name and address of buyer) Clause 2, 3, or 4 New Albany, IN 47150

for his own account or as a market agency buying livestock on a commission basis. This

Eastern Livestock



00511

OMB CONTROL NO. 0580-0015

claim is based on the following described livestock which was purchased by

(11) Eastern Livestock Co., LLC  
(name of buyer) Clause 2, 3, or 4

(12)

Date of Sale	Number of Head	Description of Livestock	Amount
10-25-10	155	calves	\$ 75,625. <sup>65</sup>
11-1-10	175	calves	88,260. <sup>15</sup>

Attached and made a part of this claim are copies of the account of purchase and other documents covering the livestock transaction, such as copies of checks issued and unpaid for the livestock purchased by:

(13) Eastern Livestock Co., LLC  
(name of buyer) Clause 2, 3, or 4

and other documents indicating the sale of the livestock in question to such purchaser

for which payment has not been made. (If full and complete documents of the transaction are not available or if these papers have become lost or destroyed, the claimant should insert a statement below of the facts:)

(14) Ed Eden gave a check for the \$75,625.65, which  
the bank converted into a cashier check.  
Ed Eden paid a cashier check for \$58,000,  
toward the \$88,260.15

OMB CONTROL NO. 0580-0015

None of the claimed amounts has been paid, and there are no setoffs or counterclaims to the same.

I hereby authorize the Grain Inspection, Packers and Stockyards Administration, Packers and Stockyards Program to release this proof of claim form and all of the attached supporting documents to the trustee or other interested parties to facilitate the processing of my claim.

(15) Brian Plunkett  
(signature and title of claimant)

(16) Subscribed and sworn to before me this 28<sup>th</sup> day of Dec, 20 10.

(17) Vina Bruce

(18) Notary Public for the State of AL

(19) Residing at De Kalb

My commission expires

(20) My Commission Expires 9-20-2014

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information is 0580-0015. The time required to complete is estimated to average 30 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection.

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Current Date: November 10, 2010  
 Account Number: 7480493837  
 Capture Date: November 10, 2010  
 Item Number: 22230002590618  
 Posted Date: November 10, 2010  
 Amount: 75,625.65  
 Record Type: Debit  
 RT Number: 042100272


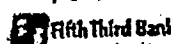
\*061000146\*  
 11/10/2010  
 6215215402

This is ~~not~~ of  
 your check. You can use it  
 the same way you would  
 use the original check.

RETURN REASON - S  
 REFER TO MAKER

0102/40/11 1610402220  
 202270002220

REFER TO MAKER

 <b>EASTERN LIVESTOCK CO., LLC</b> 135 West Market New Albany, IN 47150 812-949-9030	NO. F 34155 <u>Nov 3, 2010</u>
	PAY to the order of <u>Ashville Stockyard, Inc.</u> <u>Seventy five thousand six hundred twenty five &amp; 65/100</u> DOLLARS  <b>Fifth Third Bank</b> Eastern Livestock Co., LLC <u>Ed Edens</u>
*034155* *042100272* 7480493837*	

\*034155\*

\*042100272\*

7480493837\*

\*0007562565\*

ASHVILLE STOCKYARD  
 FOR DEPOSIT ON

>06220403<  
 022270000

04/20/2011  
 022270000

042000314 11/06/2011  
 000000000041044 RR  
 041000014 11/10/2011  
 6513923843 RR - S  
 \*061000146\* 11/10/2011  
 6215215402 RR - S  
 \*061000146\* 11/10/2011  
 6215215402 RR - S

DO NOT SIGNATURE OF WITHDRAWAL FROM WITHDRAWAL



Current Date: November 10, 2010

Account Number: 7480493837  
 Capture Date: November 10, 2010  
 Item Number: 22230002590599  
 Posted Date: November 10, 2010  
 Amount: 88,260.15  
 Record Type: Debit  
 RT Number: 042100272



\*061000146\*  
 11/10/2010  
 621521540

This is a copy of your check. You can use it the same way you would use the original check.

RETURN REASON - S  
 REFER TO MAKER

0102/40/TT 66704022901  
 7552000002220

REFER TO MAKER

 <b>EASTERN LIVESTOCK CO., LLC</b> 135 West Market New Albany, IN 47150 317-949-9039	NO. F 34156 Nov 3, 2010
	PAY TO THE ORDER OF <u>Ashville Hockeys, Inc</u> <u>Eighty eight thousand two hundred sixty &amp; 15/100</u> DOLLARS \$88,260.15  Eastern Livestock Co., LLC <u>Ed Edens III</u>
*034156* *042100272* 7480493837*	

\*034156\* 4:042100272: 7480493837\* \*0008826015\*

>062204039< 022270001	ASHVILLE HOCKEY, INC. CORPORATION	11/10/2010 3561
--------------------------	--------------------------------------	--------------------

042000314 11/08/20  
 000003000410465 RR  
 041000014 11/10/20  
 6513923844 RR - S  
 \*061000146\* 11/10/20  
 6215215402 RR - S  
 \*061000146\* 11/10/20  
 6215215402 RR - S

Do not endorse or write below this line.

Metro Bank  
800 Martin Street South  
Pell City, AL 35128

ASHVILLE STOCKYARD INC  
CUSTODIAL ACCT - SHIPPERS PROC  
PO BOX 580  
ASHVILLE, AL 35953

RE: Returned items on account # 26000372

Date: 11/10/10

The items listed below, deposited to your account, have been returned  
for the reason indicated.

The following items will be charged to account 26000372

Check#	Amount	Drawn by	Reason
516	\$1,543.00	JUSTIN WEEMS	Insufficient funds
308	\$9,420.09	LISA WALTERS	Insufficient funds
34155	\$75,625.65	EASTERN LIVESTOCK CO	Refer to maker
34156	\$88,260.15	EASTERN LIVESTOCK	Refer to maker

We have subtracted 4 items totaling \$174,848.89 from account number  
26000372.

Please subtract this amount from your records.

If you have any questions please contact us at (205)884-2265

Thank you.

Metro Bank



United States  
Department of  
Agriculture

Grain Inspection,  
Packers and Stockyards  
Administration

210 Walnut St., Room 317  
Des Moines, IA 50309-2110  
(515) 323-2579 FAX (515) 323-2590

December 8, 2010

Ashville Stockyard  
PO Box 580  
Ashville, AL 35953

**CERTIFIED MAIL NO.**  
91 7108 2133 3939 1446 2648  
**Return Receipt Requested**

Dear Ashville Stockyard:

This letter is a follow-up to our previous bond claim notification letter regarding Eastern Livestock Co., LLC, (Eastern), 135 West Market St., New Albany, IN 47150. Our review of Eastern's business records disclosed that some livestock transactions were entered into on behalf of Eastern by dealers separately registered and bonded under the Packers and Stockyards Act, 1921, as amended and supplemented. You may also wish to consider filing a claim on the bond of that registered dealer.

A list of regulated entities and bond amounts can be found on the Packers and Stockyards website: [www.gipsa.usda.gov](http://www.gipsa.usda.gov). If you have any questions as to whether a buyer is registered and bonded, you may refer to the website or contact this office by telephone at (515) 323-2579.

Enclosed is a copy of a "Proof of Claim" form. In order that your claim may be handled promptly, it is suggested that you complete the Proof of Claim form and transmit the original, along with copies of supporting documents, to Grain Inspection, Packers and Stockyards Administration Midwestern Regional Office at the address shown above as soon as practical.

To properly support your claim, you should provide this office with copies of the following:

- a. Buyers' invoices or accounts of sale, showing the date of transaction, number of head and species of livestock, weight, price, etc.
- b. Insufficient funds check(s) or draft(s).
- c. Returned item from your bank, showing that checks issued in payment for livestock were returned by the bank because of insufficient funds.
- d. Any other records you have pertaining to the transaction.
- e. A full statement explaining the transaction upon which you are basing the claim.

**CAUTION:** The bonds of Packers and Stockyards registrants contain a provision which requires that all claims filed thereunder must be filed in writing with the trustee or Packers and Stockyards Programs. Such claims must be filed with one of the parties mentioned within 60 days from the date of the transaction on which the claim is based. Therefore, if it is your intention to file a claim, we urge you to complete the enclosed Proof of Claim form and return it to this office without delay. The Proof of Claim form should be accompanied by copies of invoices, returned checks, and any other documents, which will support the claim. Retain the Originals in your files.

**Instructions to Complete  
Proof of Claim under Surety Bond  
Clause Two, Three and Four  
Form P&SP-2120**

When you, as a livestock seller, have not received payment for livestock sold use this form to submit a claim against the livestock buyer's bond.

Mail two copies of the completed notarized form with accompanying documentation, to the regional office of the Packers and Stockyards Program as listed below. The states covered by each regional office are listed below their address. A copy should be retained for the complainant's files.

<b>Regional Offices of the Packers and Stockyards Program Grain Inspection, Packers and Stockyards Administration</b>		
<b>Eastern Regional Office</b> Suite 230 75 Spring Street Atlanta, GA 30303-3308 Telephone: (404) 562-5840 FAX: (404) 562-5848 e-mail: <a href="mailto:PSPAtlantaGA.GIPSA@usda.gov">PSPAtlantaGA.GIPSA@usda.gov</a>	<b>Western Regional Office</b> One Gateway Centre 3950 Lewiston St., Suite 200 Aurora, CO 80011-1556 Telephone: (303) 375-4240 FAX: (303) 371-4609 e-mail: <a href="mailto:PSPDenverCO.GIPSA@usda.gov">PSPDenverCO.GIPSA@usda.gov</a>	<b>Midwestern Regional Office</b> Room 317 210 Walnut Street Des Moines, IA 50309-2110 Telephone: (515) 323-2579 FAX: (515) 323-2590 e-mail: <a href="mailto:PSPDesMoinesIA.GIPSA@usda.gov">PSPDesMoinesIA.GIPSA@usda.gov</a>
<b>States Covered</b>	<b>States Covered</b>	<b>States Covered</b>
AL, AR, CT, DC, DE, FL, GA, LA, MA, MD, ME, MS, NC, NH, NJ, NY, PA, RI, SC, TN, VA, VT, WV	AK, AZ, CA, CO, HI, ID, KS, MT, NM, NV, OK, OR, TX, UT, WA, WY	IA, IL, IN, KY, OH, MI, MO, MN, ND, NE, SD, WI

If you have questions regarding completion of any portion of the bond claim form, please contact the Regional Office that covers the state where you reside for assistance.

In most instances, the regional office of the Packers and Stockyards Program will complete line numbers 6, 7, 8, 10, and 11. This is not a requirement, and the claimant may complete those items of the form.

The claimant(s) must complete line numbers 1, 2, 3, 4, 5, 9, 12, 13, and 14, and must sign line 15.

A NOTARY PUBLIC must complete line numbers 16, 18, 19 and 20, and sign line 17.

<b>Line No.</b>	<b>Subject</b>	<b>Instruction</b>
1.	State	Enter the state where you live.
2.	County	Enter the county where you live.
3.	Full Name of Claimant	Enter your full name or your firm's name, respectively, as the person(s)/firm making claim against the Principal's bond.
4.	City	Enter the city where you live.
5.	State	Enter the state where you live.
6.	Name of Trustee (if applicable)	If a trustee has been named on the referenced bond, enter that name as listed on the bond on file with the Packers and Stockyards Program. If a trustee is not required on the bond, enter "None Named", or leave this item blank. If you do not know the name of the trustee, or whether a trustee is required for the referenced bond, contact the regional office of the Packers and Stockyards Program that covers your state.